IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1109 of 2004

Murugan .. Appellant/Accused

Vs.

State rep by
The Inspector of Police,
Vellore Rural Police Station,
Vellore District.
(Cr.No.448/1997) .. Respondent/Complainant

Prayer:- This Revision has been preferred against the judgment dated 23.4.2004 in C.A.No.44 of 2002 passed by the Additional District & Sessions Judge, Vellore, confirming the judgment in S.C.No.60 of 1999 on the file of the Assistant Sessions Judge, Vellore, dated 29.4.2002.

For Appellant : Mr.L.Mahendran

For Respondent : Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This revision has been preferred against the judgment in C.A.No.44 of 2002 on the file of the Additional District & Sessions Judge, Vellore, which had arisen out of the judgment in S.C.No.60 of 1999 on the file of the Assistant Sessions Judge, Vellore.

2.The short facts of the prosecution case relevant for the purpose of deciding this revision is that, on 30.5.1997 at about 7.00 am the accusd had committed the offence of rape on the victim girl aged 10 years at the time of the occurrence in a pumpset room in S.No.253/1 of Avarampalayam Village.

3.The learned Judicial Magistrate No.I, Vellore, after taking the case on file, issued summons to the accused under Section 207 of Cr.P.C., and since the case is triable by the Court of Sessions, the learned Judicial Magistrate has committed the case to the Court of Sessions under Section

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209 of Cr.P.C. The learned Assistant Sessions Judge, Vellore, on appearance of the accused, had framed charge under Section 376(2)(f) of IPC and when questioned, the accused pleaded not guilty. On the side of the prosecution, P.W.1 to P.W.8 were examined and Ex.P.1 to Ex.P.8 were exhibited. No material objects were marked.

4.P.W.1 is the victim girl. According to her, on 30.5.1997 when she went to the pumpset room belonging to the accused for the purpose of washing the cloths, there was a current failure and due to that the motor pumpset came to a halt and at that time the accused came there and asked her (P.W.1) to go inside the pumpset room and to ascertain whether the electricity supply has been restored. When she went inside the pumpset room the accused also followed her and after locking the door of the pumpset room had committed the offence of rape and has also subjected her to sexual assault. She immediately returned to her house and informed about the incident to her mother. Her mother had preferred Ex.P.1-complaint and that she was admitted in the hospital as an inpatient for 10 days.

5.P.W.2-Kanniyammal is the mother of P.W.1. According to her, on the date of occurrence she saw her daughter at about 8.00 am after she returned from the motor pumpset. She could notice contusion at both the breast of the victim girl and when she enquired about this P.W.1 had narrated what had happened to her in the pumpset and that she preferred Ex.P.1-complaint.

6.P.W.3 had advised P.W.2 to take P.W.1 to the hospital after knowing about the occurrence.

7.P.W.4 is the doctor, who had examined P.W.1 on 31.5.1997 in the Government Hospital at Vellore. Ex.P.2 is the copy of the accident register issued to P.W.1, after examining her for a sexual assault. According to her, there were injuries on the breast of the victim girl and also injuries found on the both sides of the thigh and the genitalia was found to be swollen and that her private part had admitted the tip of the little finger. Ex.P.8 is the opinion of P.W.4, the doctor, to the effect hat the victim girl was subjected to sexual assault.

8.P.W.5 is the doctor, who had examined the accused and issued Ex.P.3-certificate declaring him as potent.

9.P.W.8 is the then Inspector of Police, Vellore Taluk Police Station, who had registered the complaint-Ex.P.1 preferred by P.W.2 under Cr.No.448 of 1997 of Vellore Taluk Police Station under Section 307IPC. Ex.P.6 is the copy of the FIR. He had visited the place of occurrence and prepared observation mahazar Ex.P.5 in the presence of P.W.6. He had also drawn a rough sketch Ex.P.7. He had arrested the accused arrested on 4.6.1997 and produced before the Judicial Magistrate for judicial remand. He has examined the witnesses and recorded their statements. He had sent the victim girl as well as the accused for medical examination.

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10.P.W.7 is the then VAO of Avarampalayam village. According to him in S.No.253/1 measuring 26 ares in Avaramapalayam village belongs to Sagothammal and there is a motor pumpset in the well of the said land.

11.P.W.8 after completing the investigation filed the charge sheet against the accused.

12.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., he would deny his complicity with the crime. He has examined one Rajamanikam as D.W.1. After going through the evidence both oral and documentary the learned trial judge has come to the conclusion that the charge under Section 376(2)(f) IPC has been made out against the accused and accordingly convicted and sentenced the accused to undergo 7 years RI and slapped a fine of Rs.5,000/- with default sentence. Aggrieved by the findings of the learned trial judge, the accused had preferred an appeal in C.A.No.44 of 2002 before the Additional District & session Judge, Vellore. The learned first appellate Judge has also dismissed the appeal confirming the judgment of the learned trial judge, which necessitated the accused to prefer this revision before this Court.

13.When the revision was taken up for hearing the learned counsel for the revision petitioner Mr.L.Mahendran would submit that he will confine his arguments only in respect of the sentence and not on merits. The learned counsel for the revision petitioner would contend that an offence under Section 376(2)(f) IPC has not been made out even according to the medical evidence available in this case. Relying on the evidence of P.W.4, the doctor, who had examined the victim girl P.W.1, after the occurrence, had issued Ex.P.2 copy of the accident register. In Ex.P.2, copy of the accident register, the doctor, has categorically stated that the hymen of the victim girl was intact, but he has mentioned about the external injuries found on the breast and thigh of the victim girl. Ex.P.8 is the final opinion of P.W.4, the doctor. In Ex.P.8, the doctor, has stated that the victim girl was subjected to sexual assault. In Ex.P.2 it has been clearly stated that hymen of the victim girl was intact.

14.The learned Additional Public Prosecutor Mr.V.R.Balasubramanian relying on 2006(3) SCC (Cri) 556 [Tarkeshwar Sahu Vs. State of Bihar (now Jharkand)], would contend that to attract an offence under Section 376 the penetration is sufficient and not the rupture of the hymen. The relevant observation in the above said victim relied on by the learned Additional Public Prosecutor runs as follows:-

> "From the explanation reproduced above it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Section 375 IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that

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there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 IPC."

It is seen from the evidence of P.W.4 that there was no penetration or partial penetration in the genitalia of P.W.1. The definite opinion given by the doctor under Ex.P.8 is that the victim girl was subjected to sexual assault. A careful reading of evidence of P.W.4, the doctor, coupled with the evidence of P.W.1 the victim girl, will go to show that the accused on the date of occurrence at the time of occurrence had made an attempt to commit the offence under Section 375 IPC with the victim girl, which warrant conviction and sentence under Section 376 r/w 511 IPC.

15.The learned counsel for the revision petitioner at this stage would represent that the accused is in jail for the past four years and would plead that set of may be given to the accused.

16.In the result, the revision petition is partly allowed and the conviction and sentence of the first appellate Court in C.A.No.44 of 2002 on the file of the Additional Sessions Judge, Vellore, under Section 376 IPC is set aside, instead the accused is convicted under Section 376 r/w 511 IPC and sentenced to undergo four years RI and a fine of Rs.5,000/- default to undergo 6 months Simple Imprisonment. Set off is granted under Section 428 of Cr.P.C. The fine imposed by the trial Court, which was confirmed by the first appellate Court, will sustain and the same is to be converted in to a fine paid under Section 376 r/w 511 IPC. The entire fine amount shall be given as a compensation to the victim girl P.W.1 under Section 357(1) of Cr.P.C.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Ssv

To,

1.The Additional District & Sessions Judge,
FTC, Vellore.

2.The Assistant Sessions Judge, Vellore.
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3.The District & Sessions Judge, Vellore.

4.The Public Prosecutor, High Court, Madras.

5.The Inspector of Police,
Vellore Rural Police Station,
Vellore District,
(Crime No.448 of 1997)

6. The Districe Collector,
Vellore.

7. The Director General of Police,
Chennai.

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